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Information Commissioner's Office

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Consultation:

Direct Marketing Code

Start date: 8 January 2020

End date: 4 March 2020

Introduction

The Information Commissioner is producing a direct marketing code of practice, as required by the Data Protection Act 2018. A draft of the code is now out for public consultation.

The draft code of practice aims to provide practical guidance and promote good practice in regard to processing for direct marketing purposes in compliance with data protection and e-privacy rules. The draft code takes a life-cycle approach to direct marketing. It starts with a section looking at the definition of direct marketing to help you decide if the code applies to you, before moving on to cover areas such as planning your marketing, collecting data, delivering your marketing messages and individuals rights.

The public consultation on the draft code will remain open until **4 March 2020**. The Information Commissioner welcomes feedback on the specific questions set out below.

You can email your response to directmarketingcode@ico.org.uk

Or print and post to:

Direct Marketing Code Consultation Team
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF

If you would like further information on the consultation, please email the [Direct Marketing Code team](#).

Privacy statement

For this consultation we will publish all responses received from organisations except for those where the response indicates that they are an individual acting in a private capacity (eg a member of the public). All responses from organisations and individuals acting in a professional capacity (eg sole traders, academics etc) will be published but any personal data will be removed before publication (including email addresses and telephone numbers).

For more information about what we do with personal data please see our [privacy notice](#)

Q1 Is the draft code clear and easy to understand?

☒ Yes

☐ No

If no please explain why and how we could improve this:

We feel the code of practice should focus on explaining the law, and making clear to organisations what they need to consider in their direct marketing, rather than pointing them towards 'best practice' recommendations, which is likely to force that organisation's approach down a particular path. Of particular concern is the recommendation that consent should be secured for all direct marketing regardless of whether PECR requires it or not. This appears to be a worrying shift, that will have wide-ranging implications.

Q2 Does the draft code contain the right level of detail? (When answering please remember that the code does not seek to duplicate all our existing data protection and e-privacy guidance)

☒ Yes

In the main, yes, though some more detail on social media would be helpful, as this broad term covers such a wide variety of approaches, platforms etc.

Q3 Does the draft code cover the right issues about direct marketing?

☒ Yes

Q4 Does the draft code address the areas of data protection and e-privacy that are having an impact on your organisation's direct marketing practices?

☒ Yes

We do, though, have several specific concerns/questions:

On page 27 the Code states that a supermarket cannot send a marketing email to its customers at Christmas promoting the work of its beneficiary charity unless it has specific consent to do so. Is this correct, even if data has not been passed to the charity itself? This could have far-reaching consequences for the value of some charity/corporate partnerships.

On page 42 the Code suggests that when sending direct marketing to new customers using consent collected by a third party, it would be good practice to not rely on consent given more than six months ago. This may not be practical for a variety of reasons, and does this include data from a donation platform such as Just Giving? Surely a sponsor of an event participant does not need to re-supply their consent seven months after they have initially ticked an opt in box

On page 76 it says that because the soft opt-in applies to 'products and services' it can only apply to commercial marketing. This implies that charities are unable to use this, but surely it will be the case with charities' promotion of products such as retail items and challenge events where there is a fixed entry fee? This could be made clearer.

Page 83 states that 'it is likely that viral marketing and 'tell a friend' campaigns by e:mail would breach PECR.' Surely a charity is able to talk to someone who is taking part in a challenge event and raising funds for that charity and suggest they contact their friends and family to ask for support?

Q5 Is it easy to find information in the draft code?

☒ Yes

Yes.

Q6 Do you have any examples of direct marketing in practice, good or bad, that you think it would be useful to include in the code

☐ Yes

No

Q7 Do you have any other suggestions for the direct marketing code?

No

About you

Q8 Are you answering as:

- ☐ An individual acting in a private capacity (eg someone providing their views as a member of the public)
- ☐ An individual acting in a professional capacity
- ☒ On behalf of an organisation
- ☐ Other

Please specify the name of your organisation:

Action Medical Research

If other please specify:

Q9 How did you find out about this survey?

- ☐ ICO Twitter account
- ☐ ICO Facebook account
- ☐ ICO LinkedIn account
- ☐ ICO website
- ☐ ICO newsletter
- ☐ ICO staff member
- ☐ Colleague
- ☐ Personal/work Twitter account
- ☐ Personal/work Facebook account
- ☐ Personal/work LinkedIn account
- ☒ Other

If other please specify:

Through the Institute of Fundraising

Thank you for taking the time to complete the survey